

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016030881

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on May 4, 2016.

Lee-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

There was no appearance by or on behalf of claimant.

The matter was submitted on May 4, 2016.

ISSUE

1. Is claimant eligible for regional center services under the Lanterman Act as a result of an intellectual disability?

FACTUAL FINDINGS

INFORMATION BACKGROUND

1. On February 17, 2016, IRC notified claimant that she was not eligible for regional center services because the records claimant provided to IRC did not establish that he had a substantial disability as a result of an intellectual disability, autism, cerebral

palsy, epilepsy, or a disabling condition closely related to an intellectual disability that required similar treatment needs as an individual with an intellectual disability.

2. Claimant filed a fair hearing request appealing IRC's denial of eligibility on March 15, 2016. OAH served claimant and IRC with a Notice of Hearing on March 22, 2016.

3. On March 28, 2016, IRC representatives, claimant, and claimant's authorized representative attended an informal meeting. Following the informal meeting, IRC adhered to its original determination that claimant was not eligible for regional center services. Specifically, IRC told claimant that her records demonstrated that she is being served by the school district for Emotion Disturbance and Specific Learning Disorder, neither of which is a qualifying condition under Lanterman Act.

4. On April 4, 2016, IRC sent claimant a letter memorializing the informal meeting, summarizing IRC's determination, and reminding claimant of the hearing date, time, and location.

5. On April 26, 2016, IRC sent claimant a letter advising her of the potential witnesses and documentary evidence to be presented at hearing. The letter also reminded claimant of the date, time, and location of the hearing.

6. Claimant did not appear at the noticed date and time for hearing. A finding is made that notice of the hearing was proper. IRC elected to proceed to a prove-up hearing and present their evidence for a decision.

#### DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

7. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5) contains the diagnostic criteria used to diagnose intellectual disability. Intellectual disability is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. Three diagnostic criteria must be met in order to receive a diagnosis of

intellectual disability: deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience; deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility; and, the onset of these deficits must have occurred during the developmental period. Intellectual functioning is typically measured using intelligence tests. Individuals with an intellectual disability typically have intelligent quotient (IQ) scores at or below the 65-75 range.

The essential features of intellectual disability are deficits in general mental abilities and impairment in everyday adaptive functioning, as compared to an individual's age, gender, and socioculturally matched peers.

#### EVIDENCE PRESENTED AT HEARING

8. Michelle Lindholm, Ph.D., a staff psychologist at IRC, testified at the hearing. Dr. Lindholm reviewed claimant's records, which included multiple individualized educational program plans and a psycho-educational assessment report completed in December 2012 by Lorena Orti-Rodriguez, M.A. Ed.

Dr. Lindholm explained that, based on claimant's school records, she qualified for special education services based on a diagnosis of Emotional Disturbance and Specific Learning Disability. Neither diagnosis qualified claimant for regional center services under the Lanterman Act.

Dr. Lindholm pointed out that claimant's IEPs and the psycho-educational assessment completed by Ms. Rodriguez contained information regarding claimant that is inconsistent with a diagnosis of an intellectual disability. The psycho-educational assessment summarized claimant's scores on multiple measures administered between 2004 and 2012. Dr. Lindholm stated that the scores on each measure showed a splintered pattern of growth and development throughout that time period. In other words, certain skills were significantly low and others were in the average range. A person with an

intellectual disability should not have a splintered pattern of scores. Rather, a person with an intellectual disability should have consistent global delays in all areas over a specified period of time. Claimant's assessment history, Dr. Lindholm opined, is more indicative of a specific learning disability.

Dr. Lindholm concluded that, based on the records she reviewed, claimant did not qualify for regional center services.

## THE RECORDS

9. Claimant's records supported Dr. Lindholm's testimony.

10. Claimant's IEP's and the psycho-educational assessment both contained diagnoses of Severe Emotional Disturbance and Specific Learning Disorder. Further, claimant's psycho-educational assessment specifically ruled out an intellectual disability.

## LEGAL CONCLUSIONS

### BURDEN OF PROOF

1. In a proceeding to determine eligibility, the burden of proof is on the claimant to establish he or she meets the proper criteria. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

### STATUTORY AUTHORITY

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 provides:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact

on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

4. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability as a disability that "originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. A developmental disability includes "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Ibid.*) Handicapping conditions that are "solely physical in nature" do not qualify as developmental disabilities under the Lanterman Act.

5. California Code of Regulations, title 17, section 54000 provides:

(a) "Developmental Disability" means a disability that is attributable to mental retardation<sup>1</sup>, cerebral palsy, epilepsy, autism, or disabling conditions found to

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<sup>1</sup> Although the Lanterman Act has been amended to eliminate the term "mental

be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social

functioning which originated as a result of the psychiatric disorder or

treatment given for such a disorder. Such psychiatric disorders include

psycho-social deprivation and/or psychosis, severe neurosis or personality

disorders even where social and intellectual functioning have become

seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests

as a significant discrepancy between estimated cognitive potential and actual

level of educational performance and which is not a result of generalized

mental retardation, educational or psycho-social deprivation, psychiatric

disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or

conditions acquired through disease, accident, or faulty development which

are not associated with a neurological impairment that results in a need for

treatment similar to that required for mental retardation.

6. California Code of Regulations, title 17, section 54001 provides:

(a) "Substantial disability" means:

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retardation" and replace it with "intellectual disability," the California Code of Regulations has not been amended to reflect the currently used terms.

- (1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and
- (2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:
  - (A) Receptive and expressive language;
  - (B) Learning;
  - (C) Self-care;
  - (D) Mobility;
  - (E) Self-direction;
  - (F) Capacity for independent living;
  - (G) Economic self-sufficiency.
- (b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client. The group shall include as a minimum a program coordinator, a physician, and a psychologist.
- (c) The Regional Center professional group shall consult the potential client, parents, guardians/conservators, educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.
- (d) Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

## EVALUATION

7. Claimant had the burden to establish that he is eligible for regional center services. Based on the records provided to IRC and the testimony of Dr. Lindholm, claimant does not have an intellectual disability and is thus ineligible for services under the Lanterman Act.

## ORDER

Claimant's appeal from the Inland Regional Center's determination that she is not eligible for regional center services is denied.

DATED: May 10, 2016

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KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.